

Remarks

Claims 30-37 are pending in this application.

Claim 30 has been amended to include the limitation of claim 31. Accordingly, Claim 31 has been cancelled.

Claims 35-37 have been cancelled.

In the Office Action claims 30 and 32-37 were rejected under 35 USC 103 (a) as being unpatentable over Wright et al WO 2004/064517 in view of Coulibaly or Jaetsch et al.

Claim 31 was not rejected but was objected to. The Examiner indicated that “30 ought to also have the limitations as recited in claim 31. Then such a claim would be again considered for allowability.” Claim 30 has been amended above to include the limitation of claim 31 as suggested by the Examiner and it is submitted that this claim, and dependent claims 32-34, should now be allowable.

Regarding the obviousness rejection it is believed that this rejection is rendered moot by the above amendment. Preliminarily, Applicants attorney notes that he is unable to identify the reference identified as “Coulibaly” in the Office Action. Nevertheless, in making this rejection the Examiner noted that “Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results’ with the claimed combination. The unexpected results achieved with the combination are shown in the data in the specification, particularly Tables 1, 2 and 3, particularly the mortality rates at 2 days after treatment. Mortality rates achieved with the combination of A (bifenthrin) and B (imidacloprid) are greater than the additive result that would be expected. See, for example, Table 1 where A alone at 10 ppm results in 24 % mortality, B alone at 100 ppm results in 4 % mortality while the combination of 10 ppm A and 100 ppm B results in 76% mortality. The expected additive effect would have been 28%. The achieved results are unexpected! Similar results are shown in the tables for other combinations.

Conclusion

The claims that were rejected have either been cancelled (claims 35-37) or amended to include the limitation of claim 31 which the Examiner indicated would make them allowable. The Examiner’s suggestion is appreciated.

The Double Patenting Rejection

Claims 30 – 37 were provisionally rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 6, 16, and 28 of copending Application No. 10/585,426. It is noted that this ground of rejection is provisional, as neither the present claims nor those of Application No. 10/585,426 have been granted. Applicants further note that a terminal disclaimer may be filed to overcome this rejection in the event that pertinent claims are allowed in both applications.

Conclusion

In light of the foregoing, Applicants urge that the presently claimed invention, as amended, is patentable. Reconsideration is respectfully requested.

Should the Examiner have any questions, the Examiner is invited to telephone applicants' undersigned representative.

Respectfully submitted,

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